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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,619	08/25/2003	Dennis A. Boismier	1001.1689101	2861

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EXAMINER

WYSZOMIERSKI, GEORGE P

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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11/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/647,619

Applicant(s)

BOISMIER ET AL.

Examiner

George P. Wyszomierski

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/24/07 (RCE, Amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

1. The Request for Continued Examination, fee, and amendment filed October 24, 2007 have been entered. Claims 23-36 are pending in this application.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 23-26 and 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (U.S. patent 5,725,570) in view of Bellouard et al. (U.S. Patent 6,669,794).

Column 8 of Heath discloses a stent including wire loop portions made of a Ni-Ti alloy that initially has linear elastic properties but includes a flexible portion which has been heated to obtain superelastic properties. Heath does not state that an intermediate portion of the prior art devices is flexible or superelastic, "only one" superelastic region as recited in instant claim 29, does not refer to "filter legs" as recited in instant claims 25 and 34, and does not refer to the temperature range of instant claim 31. However,

a) With regard to intermediate portions or only one portion of superelasticity, Bellouard indicates that it was known in the art, at the time of the invention, to subject Ni-Ti alloys for use as medical devices to localized heat treatments to obtain superelasticity in a desired portion of the device. See Bellouard column 7, lines 5-10. Further, Bellouard column 10, lines 35-45 as well as column 13 of that reference, indicate that any desired portion or portions of the devices may be made superelastic in this manner.

b) The interwoven material depicted in the drawings of Heath would appear to be suitable as a filter or filter leg material.

c) The temperature range used in Heath column 8 overlaps that presently claimed.

Thus, the combined disclosure of Heath and Bellouard et al. would have rendered devices as claimed obvious to one of ordinary skill in the art.

Claims 23, 25, 27-32, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muni et al. (U.S. Patent 6,375,629) in view of Bellouard et al.

Column 7 of Muni discloses a core wire made of a Ni-Ti alloy that initially has linear elastic properties but includes a flexible portion which has been heated to obtain superelastic properties. Muni does not state that an intermediate portion of the prior art devices is flexible or superelastic, "only one" superelastic region as recited in instant claim 29, does not refer to "filter legs" as recited in instant claims 25 and 34, and does not refer to the temperature range of instant claim 31. However,

a) The disclosure of Bellouard columns 7, 10 and 13 renders the making of any desired portion or portions of the Muni devices superelastic obvious to one skilled in the art, for reasons as stated in item 3(a) supra.

b) Muni column 3, line 19 indicates the suitability of the prior art materials for use in filters.

c) The temperature ranges disclosed in column 7 of Muni overlap those as presently claimed.

Thus, the combined disclosures of Muni et al. and Bellouard et al. would have rendered devices as presently claimed obvious to one of ordinary skill in the art.


4. By the amendment filed October 24, 2007, Applicant specifies that the claimed devices include a solid linear elastic member, and alleges that such would distinguish over the prior art references. The examiner's position is that nothing in the prior art would indicate that the linear elastic or superelastic portions of any of the prior art references are anything but solid, i.e. they are metallic and are at temperatures where one would expect them to be solid. Applicant further alleges that one would not combine the Muni disclosure with that of Bellouard because Bellouard teaches imparting superelasticity while Muni teaches removing it. The examiner's position is that the combination of Muni and Bellouard indicates that it was known in the art, at the time of the invention, to obtain medical devices having both a linear elastic portion and a superelastic portion, and that the latter portion may be present at any desired location in the device, such as the intermediate portion as presently claimed.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (571) 272-1252. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (571) 272-1244. All patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GPW
November 1, 2007


GEORGE WYSZOMIERSKI
PRIMARY EXAMINER
GROUP 1700